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6 Attorney for Debtor(s)

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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

Case No.: BK-S-09-17787-BAM

Chapter 13

JOSE L. PINA and MARIA L. PINA  
Debtor(s).

**OPPOSITION TO MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

Hearing Date: 9/22/09

Hearing Time: 9:30 a.m.

COMES NOW Debtor(s), JOSE L. PINA and MARIA L. PINA by and through counsel,  
Randal R. Leonard, Esq., and hereby opposes creditor U.S. Bank's Motion for Relief from  
Automatic Stay. This Opposition is based upon the pleadings and papers in file herein and the  
Memorandum of Points and Authorities attached hereto.

Dated this 8th day of September, 2009.

/s/ Randal R. Leonard  
Randal R. Leonard, Esq.  
Nevada Bar No. 006716  
500 South 8<sup>th</sup> Street  
Las Vegas, NV 89101  
(702) 598-3667  
Attorney for Debtor(s)

1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

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3                   Creditor US Bank, claims that Debtors are behind post-petition on their Note obligations  
4                   secured by a Lien. Debtor currently has a Motion to Avoid Lien, set for hearing on September  
5                   17, 2009 at 3:30 p.m. That Motion seeks to strip of Debtors second mortgage, making Debtors  
6                   ability to maintain the home easier. Therefore, Debtor requests that the Court enter an Adequate  
7                   Protection Order based upon the following:

- 8                   1.       That the Debtor finalize the procedure to strip the second mortgage.
- 9                   1.       That the Debtor commences the regular monthly mortgage payments.
- 10                  2.       That the Debtor cures the monthly payment arrears over a six month period in
- 11                  equal installments.
- 12                  3.       That the Debtor be given a 15-day default letter should the Debtor default in
- 13                  payments.
- 14                  4.       Reasonable attorney's fees and costs.

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17                  In the alternative, Debtor disputes Creditor's claims as to the amount debtor owes in  
18                  monthly payments, late charges, and attorney's fees and costs. Nevertheless, should the claims  
19                  prove true, Debtor requests that the Court enter an Adequate Protection Order based upon the  
20                  following:

- 21                  1.       That the Debtor commences the regular monthly mortgage payments.
- 22                  2.       That the Debtor cures the monthly payment arrears over a six month period in
- 23                  equal installments.

- 1       3. That the Debtor be given a 15-day default letter should the Debtor default in
- 2              payments.
- 3       4. Reasonable attorney's fees and costs.
- 4

5              11 U.S.C. § 362(d) governs motions to lift the automatic stay. It states that the stay shall  
6 not lift unless the party requesting relief can show (1) cause including a lack of adequate  
7 protection or (2) that the property involved does not have equity and the property is not  
8 necessary for an effective reorganization.

9              In this matter, the APO should protect the Creditor. Therefore, Debtors submit that the  
10 stay should not lift at this time.

11             In the alternative, should the claims prove true, Debtor further requests that if the  
12 Creditor has already commenced foreclosure proceedings against Debtor's property by filing a  
13 Notice of Default or Notice of Breach with the County Recorder, that the Creditor be required to  
14 initiate the foreclosure process again by filing the Notice of Default or Notice of Breach anew.  
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17             Dated this 8th day of September, 2009.

18             /s/ Randal R. Leonard  
19             Randal R. Leonard, Esq.  
20             Nevada Bar No. 006716  
21             500 South 8<sup>th</sup> Street  
22             Las Vegas, NV 89101  
23             (702) 598-3667  
24             Attorney for Debtor  
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1                   **CERTIFICATE OF SERVICE**

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3 I hereby certify that on the 8th day of September 2009 I sent via electronic means, the foregoing

4                   **OPPOSITION TO MOTION FOR RELIEF FROM STAY** to the following

5 ecfmail@LasVegas13.com

6 Rick Yarnall, Esq.  
Chapter 13 Trustee

7 bk@wildelaw.com

8 Gregory L. Wilde, Esq.  
Attorney for U.S. Bank

10  
11                   /s/ Randal R. Leonard

12 Randal R. Leonard, Esq  
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